MARIMUTHU v. KHANABAN

[A. Cr. J. (Spenser Wilkinson J.) March 30, 1955]

[Penang — Criminal Appeal No. 7 of 1955]

Criminal law and Procedure — Private Summons for voluntarily causing hurt — Medical report — Production of Medical report after evidence of both sides given — Medical Officer not called to give evidence.

This was a private prosecution where the complainant alleged that the respondent had voluntarily caused hurt to him, to wit, that the appellant had hit him on the head with a hammer. There was a conflict of evidence as to whether the complainant was armed with a piece of wood or an iron rod or some other weapon.

At the close of the case for the defence, the learned Magistrate called the Court usher as witness who produced a report of the Medical Officer as to injuries sustained by the complainant. It transpired that the same Medical Officer also attended to the appellant, whose injuries appeared to have been at least as severe as those of the complainant.

Held: (1) it was not fair for the Court to put in and use a Medical report regarding the injuries of the complainant without at the same time obtaining evidence as to injuries sustained by the appellant: (2) there was no justification for putting in the additional evidence at such a late stage.

Case referred to:—

(1) *Ramasamy v. Regina* (1955) M.L.J. 95.

CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Cur. Adv. Vult.

Spenser Wilkinson J.: — This was a private prosecution in which the complainant alleged that the appellant had voluntarily caused hurt to him.

The case for the complainant was that the appellant had hit him on the head with a hammer with a head measuring about 4 inches. There was, however, a conflict of evidence as to whether the complainant was armed with a piece of wood or an iron rod or some other weapon.

There were various grounds of appeal of which the most important was that the learned Magistrate should not have admitted the report of the Medical Officer but should have called the Medical Officer to give evidence. What happened in fact was that after all the evidence on both sides had been given the Court called as a witness the Court Usher, who produced a report by the Medical Officer as to the injuries sustained by the complainant. Whether or not this report was in the circumstances admissible as evidence under the provisions of Section 427 of the Criminal Procedure Code I do not find it necessary to decide. I understand that the Medical Officer who made this report was the same Medical Officer who had attended to the appellant, whose injuries would appear to have been at least as severe as those of the complainant. In the circumstances I do not feel that it was fair for the Court to put in and use a report of the Medical Officer regarding the injuries of the complainant without at the same time obtaining evidence as to the injuries sustained by the appellant. Moreover, I could see no justification for putting in this additional evidence at that stage. I have already expressed my views on this subject in *Ramasamy v. Regina*[1], which was heard on the same day as this appeal.

In addition to this the learned Magistrate appears to have misdirected himself upon various points in the evidence. He refers to the Medical Officer's report as describing the injuries to the head of the complainant as having been inflicted by the defendant's hammer, but the report, Ex. P. 4 makes no mention whatsoever of any hammer. The learned Magistrate in his grounds of judgment says that he thinks it improbable that the defendant was struck over the head with an iron bar having regard to the nature of the wound described by P.W. 4; but P.W. 4 did not describe the nature of any wound but merely stated that the defendant was bleeding from his forehead. Finally, in paragraph 6 of his grounds he states that the Court accepted the evidence of P.W. 1, P.W. 2 and P.W. 3 which was consistent. The learned Magistrate does not appear to have noticed the very considerable discrepancy between the evidence of the complainant and his wife on the one hand and of P.W. 2 on the other. Both the complainant and his wife described the defendant as going up to the complainant and striking him with a hammer, but P.W. 2 quite clearly states that he saw the complainant and the appellant fighting and that they were struggling and aiming blows at each other. He further stated that he did not see the hammer land on the complainant but only that it landed on the piece of wood held by the complainant.

In view of the considerations above mentioned I felt that the conviction could not stand and the only question that arose was whether or not I should order a retrial.

I came to the conclusion, however, that to do so would merely be to give the complainant a second opportunity of proving a case which in my opinion he failed to do at the first trial. I, therefore, allowed the appeal and quashed the conviction.

Appeal allowed.